

Introduced by

**NORTH DAKOTA CENTURY CODE CHAPTER 15.1-32 -
SPECIAL EDUCATION**

Chapter 15.1-32 of the North Dakota Century Code is created and enacted as follows:

15.1-32-01. Definitions. As used in this chapter:

1. "Learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written languages and which may be manifested in disorders of listening, thinking, talking, reading, writing, spelling, or arithmetic. The term includes conditions such as perceptual impairments, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, but does not include learning problems due primarily to visual, hearing or motor disabilities, mental retardation, emotional disturbance, or environmental disadvantage.
2. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
3. "Special education" means instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.
4. "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.
5. "Student with disabilities" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who because of mental, physical,

emotional, or learning characteristics requires regular or special education and related services designed to meet the individual's educational needs. The term includes an individual who is mentally retarded, hearing impaired, deaf, deaf-blind, speech or language impaired, visually impaired, seriously emotionally disturbed, orthopedically impaired, or autistic, and an individual who has a specific learning disability, a traumatic brain injury, or other health impairment.

NOTE: Present Section 15-59-01. The rewrite adds the definition of related services, as found in present Section 15-59-02.1.

15.1-32-02. Coordination of special education policies and programs. The superintendent of public instruction shall establish, within the provisions of this chapter, general state policy regarding special education and shall endeavor to ensure a cooperative special education program coordinating all available services. The superintendent of public instruction shall cooperate with private agencies and solicit their advice and cooperation in the establishment of policy and in the coordination and development of special education programs.

NOTE: Present Section 15-59-05.

15.1-32-03. Interagency cooperative agreements - Development and implementation. The superintendent of public instruction shall develop and implement interagency agreements with the department of corrections and rehabilitation, the department of human services, the state department of health, and other public and private entities to maximize the state resources available for fulfilling the educationally related service requirements of Public Law No. 94-142 [89 Stat. 773] and section 504 of the Rehabilitation Act of 1973, as amended.

NOTE: Present Section 15-59-05.2.

15.1-32-04. Nonpublic institutions - Rules. The superintendent of public instruction shall adopt rules governing special education programs in institutions that are wholly or partly supported by the state and which are not supervised by public school authorities. The rules must be similar to those established for the delivery of special education in a public school.

NOTE: Present Section 15-59-06.1.

15.1-32-05. Special education - Cooperation among agencies. The superintendent of public instruction, the state department of health, and the department of human services shall

- 1 cooperate in planning and coordinating early intervention programs for children under the age
2 of two.

NOTE: Present Section 15-59-02.1. This language is included in the present statement of legislative intent. It is retained in this rewrite as a separate section in order that the committee might review it and make a decision regarding its retention. See Section 15.1-32-03 regarding other interagency cooperation.

- 3 **15.1-32-06. Director of special education.** The superintendent of public instruction
4 shall employ a qualified director of special education and any necessary assistants.

NOTE: Present Section 15-59-03. Section 15.1-02-03 provides that the "superintendent of public instruction may appoint an assistant. The superintendent may also hire personnel or contract with other persons to perform the work of the department of public instruction." The committee may wish to consider whether this language sufficiently covers authority to hire personnel or if the director of special education should continue as a statutory appointment. See also Section 15.1-32-07 and other sections in this chapter which refer to this position.

- 5 **15.1-32-07. Director of special education - Powers and duties.** The director of
6 special education shall adopt rules for the provision of special education to students with
7 disabilities and for the administration of this chapter. The director shall assist school districts
8 with the development and administration of special education programs, and provide a process
9 for the certification of schools, teachers, facilities, and equipment.

NOTE: Present Section 15-59-05. The present statute provides that the director of special education shall "prescribe" rules. The committee should determine whether the Superintendent of Public Instruction or the appointed director of special education should have this power.

- 10 **15.1-32-08. School districts - Provision of special education.** Each school district
11 shall provide special education, singly or jointly with other districts, in accordance with the
12 provisions of this chapter. Each school district shall cooperate with the director of special
13 education and with the institutions of this state in the provision of special education.

NOTE: Present Section 15-59-04. Present Section 15-59-04 requires each school district to "cooperate with the director of special education and with the institutions of this state." The committee may wish to clarify which entities are intended to be included within the phrase "institutions of this state."

- 14 **15.1-32-09. Gifted students.** A school district may provide special education to
15 students who are gifted.

NOTE: Present Section 15-59-04.

1 **15.1-32-10. School district records - Students with disabilities.** Each school district
2 shall make and keep current a record of all students with disabilities who are residents of the
3 district.

NOTE: Present Section 15-59-04.1.

4 **15.1-32-11. Multidisciplinary teams - Individualized education plans.** If a student is
5 suspected of having a disability, the student's principal, the principal's representative, or the
6 director of special education shall convene a multidisciplinary team consisting of educational
7 professionals, medical professionals, and the student's parent to share assessment information
8 related to the student's suspected disability. If necessary, the team shall develop an
9 individualized education plan and make recommendations for the delivery of special education
10 and related services to the student.

NOTE: Present Section 15-59-02.1. This language is included in the present
statement of legislative intent. It is retained in this rewrite as a separate section in order
that the committee might review it and make a recommendation regarding its retention.

11 **15.1-32-12. Related services - Insurance options - School district responsibility.**
12 Each school district shall require that all family insurance options be exhausted in paying the
13 costs of determining a student's medically related disability and in paying for the provision of
14 related services to the student, provided there is no financial loss to the student or the student's
15 parent. The school district is responsible for all costs not covered by the family's insurance.

NOTE: Present Section 15-59-02.1. This language is included in the present
statement of legislative intent. It is retained in this rewrite as a separate section in order
that the committee might review it and make a recommendation regarding its retention.

16 **15.1-32-13. Special education per student payments.**

- 17 1. A student with disabilities who receives special education services is deemed to be
18 enrolled in the student's school district of residence for purposes of calculating per
19 student payments.
- 20 2. An additional prorated per student payment may be made if a student with
21 disabilities attends a special education summer program approved by the
22 superintendent of public instruction, provided the student's individualized education
23 plan is written during the last quarter of the school calendar and specifically
24 requires that the student attend a special education summer program.
- 25 3. If a student who is enrolled in a nonpublic school receives special education
26 services in a public school, the superintendent of public instruction shall forward a

proportionate per student payment to the school district in which the student receives the services.

4. a. If in the opinion of a multidisciplinary team a student is unable to attend a public school in the special education unit to which the student's school district of residence belongs, the student's school district of residence shall contract with another public school that:
 - (1) Does not belong to the same special education unit;
 - (2) Is located in this state;
 - (3) Is willing to admit the student; and
 - (4) Is able to provide appropriate services to the student.
- b. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting school.
- c. The contract must provide that the student's school district of residence agrees to pay to the district in which the admitting school is located, as part of the cost of educating the student for the school year, an amount equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment. The amount paid may not exceed the actual per student cost incurred by the admitting school.
- d. The liability of the student's school district of residence must be reduced proportionately if the student attends the admitting school for less than an entire school year.
- e. Upon being notified by the admitting district that tuition payments provided for by this section are due and unpaid, the superintendent of public instruction, after verification, shall withhold all state aid payments to which the student's school district of residence is entitled until the tuition due has been paid.
- f. The superintendent of public instruction shall provide to the school district, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.

NOTE: Present Section 15-59-06. The rewrite omits the sentence "The transportation must be furnished as provided by rules of the superintendent of public instruction." Transportation must be provided in accordance with federal law and Section 15.1-32-15. Also, see present Section 15-40.1-16.1, which will be rewritten in a new chapter. The

rewrite also omits a sentence that defines a normal schoolday as six hours. Section 15.1-06-04 defines a full day of instruction.

15.1-32-14. Student with disabilities - Attendance at private institution or out-of-state public school.

1. If in the opinion of a multidisciplinary team a student is unable to attend a public school in the student's school district or residence because of a physical disability, a mental disability, or a learning disability, and if no public school in the state will accept the student and provide the necessary services, the student's school district of residence shall contract with:
 - a. A private, accredited, nonsectarian, nonprofit institution that is located within or outside of this state and which has the proper facilities for the education of the student; or
 - b. A public school located outside of this state that has proper facilities for the education of the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting institution or school.
3. The contract must provide that the student's school district of residence shall pay to the institution or school, as part of the cost of educating the student, an amount for the school year equal to two and one-half times the state average per student elementary or high school cost, depending upon the student's level of enrollment, plus twenty percent of all remaining costs.
4. The amount paid may not exceed the actual per student cost incurred by the institution or school.
5. The superintendent of public instruction shall provide to the student's school district of residence, within the limits of legislative appropriations, an amount equal to eighty percent of the remainder of the actual cost of educating the student with disabilities not covered by other payments or credits.
6. The school district of residence is entitled to the per student payment for a student who receives services under this section.

NOTE: Present Section 15-59-07. The rewrite omits the sentence "The transportation must be furnished and reimbursed as provided by rules of the superintendent of public instruction." See the note under Section 15.1-32-13.

1 **15.1-32-15. Transportation services - State reimbursement.** If a student's
2 individualized education plan requires the provision of transportation services, the student's
3 school district of residence shall provide the services by any reasonably prudent means,
4 including a regularly scheduled schoolbus, public transit, commercial transportation, chartered
5 or other contracted transportation, and transportation provided by the student's parent or other
6 responsible party. The school district is entitled to state reimbursement for the provision of
7 transportation services to the student. If transportation is provided by a student's parent, the
8 superintendent may reimburse the school district only for mileage costs.

NOTE: Present Section 15-59-02.1. This language is included in the present statement of legislative intent. It is retained in this rewrite as a separate section in order that the committee might review it and make a recommendation regarding its retention. See present Section 15-40.1-16.1, which will be rewritten in a new chapter.

9 **15.1-32-16. Extended educational program.** A student with disabilities is entitled to
10 an educational program in excess of one hundred eighty days per year if the student's
11 individualized education plan provides that regression would be caused by an interruption in the
12 student's educational program and that the student's limited recoupment capacity makes it
13 impossible or unlikely that the student will attain the level of self-sufficiency and independence
14 from caretakers which the student would otherwise be expected to reach.

NOTE: Present Section 15-59-02.1. This language is included in the present statement of legislative intent. It is retained in this rewrite as a separate section in order that the committee might review it and make a recommendation regarding its retention.

15 **15.1-32-17. Cost - Liability of school district for special education.** If the cost of
16 providing special education and related services to a student with disabilities, as determined by
17 the superintendent of public instruction, exceeds the reimbursement provided by the state, the
18 student's school district of residence is liable to pay for each such student an amount over the
19 state reimbursement up to a maximum each school year of two and one-half times the state
20 average per student elementary cost of education or high school cost of education, depending
21 on the student's level of enrollment, plus twenty percent of all remaining costs. The two and
22 one-half times amount includes the amount that the school district is required to pay under
23 section 15.1-32-13. The state is liable for eighty percent of the remaining cost of education and
24 related services for each such student with disabilities within the limits of legislative
25 appropriations.

NOTE: Present Section 15-59-06.2.

1 **15.1-32-18. Boarding care costs - Reimbursement of school district.** The
2 superintendent of public instruction, within the limits of legislative appropriations, shall
3 reimburse a student's school district of residence an amount equal to eighty percent of the room
4 and board costs paid for a student with disabilities who is placed in a facility located outside of
5 the student's school district of residence in order to receive special education services not
6 available within the student's school district of residence. The student's school district of
7 residence is liable for any room and board costs in excess of those reimbursed as provided in
8 this section. The placement of a student with disabilities in a public or private facility will be
9 made by a school district. The placement of a student with disabilities in congregate care will
10 be made in a facility designated by the department of human services.

NOTE: Present Section 15-59-07.2.

11 **15.1-32-19. School district financing - Levy.** The board of a school district may
12 budget an amount from the school district general fund for its special education program. The
13 school board may, with approval by a majority of the board, levy a tax pursuant to subdivision d
14 of subsection 1 of section 57-15-14.2 for the purpose of carrying out a special education
15 program, separately or jointly with other school districts.

NOTE: Present Section 15-59-08.

16 **15.1-32-20. Federal aid for special education.**

- 17 1. The superintendent of public instruction may apply for, receive, and administer
18 federal aid available for the provision of special education services to students.
19 2. The superintendent may expend any federal aid received in the administration of
20 this chapter within the limits of legislative appropriations.
21 3. School districts and multidistrict special education units are deemed to be local
22 education agencies for purposes related to the funding of special education
23 services within the limits of legislative appropriations.
24 4. The school for the blind, the school for the deaf, the developmental center at
25 westwood park, Grafton, the youth correctional center, and the Jamestown state
26 hospital may apply for, receive, and administer federal aid and may expend federal
27 aid within the limits of legislative appropriations.

NOTE: Present Section 15-59-05.1.

- 1 **15.1-32-21. Right to educational services - Attorneys' fees.** In an administrative or
2 judicial proceeding to enforce the rights of an individual with disabilities to receive educational
3 services, the court or hearing officer may award reasonable attorneys' fees and costs to a
4 prevailing parent or to the individual with disabilities.

NOTE: Present Section 15-59-10. Present Section 15-59-10 provides that each "parent or guardian of a child with disabilities as defined in subsection 2 of section 15-59-01, or an adult with disabilities between the ages of eighteen and twenty-one is entitled to enforce the right of that child or adult with disabilities to an education guaranteed by state and federal law, through an administrative proceeding, civil action, or other remedy available by common law or statute." The sentence is omitted from the rewrite because it merely states a legally existing right.

The section goes on to provide that the "parent or guardian of a child with disabilities or the adult with disabilities is encouraged to submit a written request to the appropriate school administrator or director of special education regarding the relief sought prior to a proceeding." This sentence is omitted because it "encourages" rather than requires an action.

DRAFTER'S NOTE

Present Section 15-59-02.1 provides the following:

15-59-02.1. Legislative intent - Special education. This statement of legislative intent is provided to define more clearly the relationship between the federal government, state, school districts, and parents of students with disabilities in the provision of special education and related services. State special education policies are directed to achieving the purposes set out in the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.]. State funding along with federal resources are matched with local funds to achieve these purposes. "Related services" means transportation and such developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.

The school administrator or the administrator's appointed representative or director of special education other than the student's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education program plan for the student with disabilities, and make recommendations for required special education and related services.

The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability.

In the case of students with disabilities who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related

services, including boarding care, be borne by state special education funds and school district funds.

"All students with disabilities have the right to a free appropriate public education" means that all students with disabilities have the right to special education and related services which must be provided at public expense, under public supervision and direction and at no cost to parents. "At no cost" means specifically designed instruction and related services as described in the student's individualized education program plan provided without charge but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

School districts must require use of family insurance, or similar third-party payments, in whatever amount is allowed, as long as there is no financial loss to the student or the student's parent, for determining a student's medically related disability or other required related services which results in the student's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a student with disabilities resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the superintendent of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by the parent of a student with disabilities or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the department of human services has authority under chapter 25-16 to provide early intervention services to meet the needs of children with disabilities ages zero through two years, the legislative assembly recognizes this provision and requires the superintendent of public instruction, the state department of health, and the department of human services to cooperate in planning and coordinating programs for these children.

Because the purpose of a properly drafted bill should be self-evident, the Legislative Council's drafting manual provides that a statement of legislative policy, purpose, or intent should not be used. Therefore, the statement of legislative intent has been omitted from the rewrite. Substantive provisions found within the legislative intent section have been given their own sections, subject to committee review and approval. See Sections 15.1-32-05, 15.1-32-11, 15.1-32-12, 15.1-32-15, and 15.1-32-16.

OMITTED SECTION

15-59-05.3. Credentialing process for special education teachers. The superintendent of public instruction may not change the credentialing process for special education teachers as it is in

effect on March 1, 1999, without first convening a meeting to include representatives of the North Dakota council of education leaders, the council of exceptional children, the North Dakota education association, and the North Dakota school boards association. The purpose of the meeting is to receive comments regarding the proposed changes, the applicability of the proposed changes, including the scheduling, the manner of implementation, associated costs, and the short-term and long-term effects of the proposed changes. If, within thirty days after the date of the meeting, members of any two representative groups present at the meeting object in writing to the proposed changes, the superintendent may not implement the change prior to July 1, 2001.

NOTE: Present Section 15-59-05.3. Present Section 15-59-05.3 sets forth a mechanism that the Superintendent of Public Instruction must follow in implementing changes to the credentialing process for special education teachers. If objections are raised, the Superintendent of Public Instruction is precluded from implementing the changes prior to July 1, 2001. The committee will need to determine whether this section should be continued and if so, the committee will need to amend the reference to July 1, 2001.